INFORMATION LETTER

Not for Publication — NATIONAL CANNERS ASSOCIATION — For Members Only

No. 1204 — Washington, D. C. — October 2, 1948

Harold Stassen To Speak at Canners Convention

FORMER MINNESOTA GOVERNOR SCHEDULED TO ADDRESS OPENING GENERAL SESSION, MONDAY, JANUARY 17

The Honorable Harold E. Stassen, President of the University of Pennsylvania, former Governor of Minnesota, 1948 candidate for the Republican Presidential nomination, and Party keynoter in 1940, will be a chief speaker at the Opening General Session of the 1949 Annual Convention of the National Canners Association. Mr. Stassen's acceptance of the Association's invitation to speak was received this week. His address is scheduled Monday, January 17, at the Municipal Auditorium, Atlantic City.

His is the second acceptance of invitations extended to three major speakers for the Monday morning session, that of Commissioner Lowell B. Mason of the Federal Trade Commission having been announced in last week's issue of the INFORMATION LETTER.

Announcement of the third speaker for the Opening General Session is expected to be made next week. Plans for the Tuesday morning session also are underway, and details will be announced as soon as they are finalized.

Elected three times as Governor of Minnesota, Mr. Stassen during his administration demonstrated in many ways his recognition of the importance of the canning industry to the agri-

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A Story Worth Repeating!

The favorable showing of canned fruits and vegetables in the monthly report of the Bureau of Labor Statistics again is being publicized by the Association. On previous releases, certain members have been given publicity in their local papers, and it is therefore urged that *all members* place this latest information, "A Story Worth Repeating!" and the accompanying matrix, both of which are enclosed with this mailing of the LETTER, before their local editors and radio stations.

N.C.A. Represented in Group To Study New Pesticides

The Association's Raw Products Bureau is represented on a committee of the Agricultural Insecticide and Fungicide Association which was created to critically evaluate the possible health hazards in the use and development of new organic pesticides based upon the present status of research.

The Association's participation in this study is part of its continuing program of supplying technical advice to canners concerning residue hazards and developments in this field.

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New Press Campaign Tells Canned Foods Price Story

With the release this week of Bureau of Labor Statistics figures again pointing to the favorable position of canned fruits and vegetables as least expensive of all foods, the Association prepared and issued new publicity material designed to achieve widespread publicity for the low retail prices of canned foods.

Meanwhile, newspaper clippings received by the Association this week showed that price publicity issued August 28 is known to have been published in papers having a circulation of 2,707,667, not counting trade papers.

Included in the mailing of this issue of the INFORMATION LETTER are a separate page entitled "A Story Worth Repeating!" and a matrix entitled "Market Basket Bargain" which are made available to canners with the expectation that they will be placed before local editors with a request for publicity. *(Please turn to page 327)*

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The canning industry has been invited to present its view to the Capehart Committee studying the Federal Trade Commission's pricing policies and the Supreme Court decision in the *Cement* case. An article supplying background information on this subject begins on page 330.

UNITED STATES POLICY WILL PERMIT DEVELOPMENT OF PACIFIC TRUST TERRITORY FOR COMMERCIAL FISHING

Department's Statement Opens Up Former Mandated Islands To U. S. Industry

The policy of the United States Government with regard to commercial fishing operations in the United States Trust Territory of the Pacific Islands, which has been approved by the Departments of State, Army, Navy, Air Force and Interior as a guide to the administration of the Trust Territory, will have the effect of opening the area to commercial fishing.

Rich fishery resources, particularly tuna, are available in the waters around this Territory in an area as large as the continental United States, the State Department pointed out in announcing this U. S. policy September 29. The Territory itself contains scarcely as much land area as the State of Delaware.

Several commercial fishing companies have shown interest in beginning fishing operations immediately, the State Department said. It is possible that an industry can be built on the fishery resources that eventually will pay a considerable part of the administrative cost of the Territory.

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. . . . . ***FOR IMMEDIATE RELEASE*** . . . . .

A STORY WORTH REPEATING!

Washington, D. C., (October 2, 1948)—Canned fruits and vegetables are the most economical buy in your market basket, states the National Canners Association.

These canned products have consistently been listed as the least expensive of the foods included in the periodical reports of the Government's Bureau of Labor Statistics. This Federal agency measures changes in the price of everyday necessities by a cost-of-living index issued each month.

The most recent of these BLS reports, for August, again shows that canned fruits and vegetables are lowest in price of all foods. They also are 17 percent lower in price than the average price of all the so-called cost-of-living items—clothing, rent, food, etc.—which stood at 174.5 percent of prewar.

Prices of all foods averaged 216.6 percent of prewar as of August 15, BLS shows. In the same report, canned fruits and vegetables were only 157.8 percent of the prewar base period 1935-39. The August, 1948, prices of canned fruits and vegetables were about 16 percent below the corresponding figure for January, 1947.

Retail prices of fresh fruits and vegetables have risen to 204.8 percent of prewar. Fresh meats, poultry and fish in the butcher's showcase are shown at 267 percent in the report.

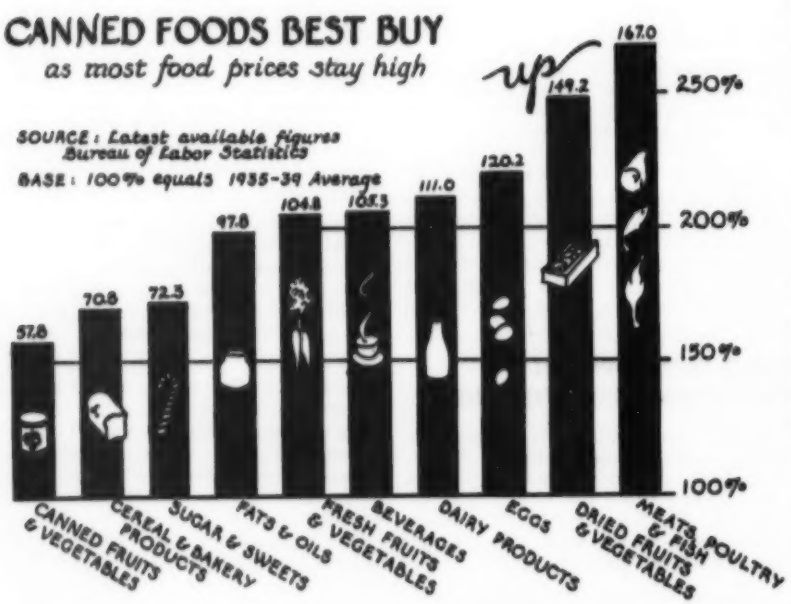
As of August 15, the date covered by the most recent BLS report, foods had increased in price since 1935-39 by the percentages shown:

Meats, poultry and fish	267.0
Dried fruits and vegetables	249.2
Eggs	220.2
Dairy products	211.0
Beverages	205.3
Fresh fruits and vegetables	204.8
Fats and oils	197.8
Sugar and sweets	172.3
Cereal and bakery products	170.8
Canned fruits and vegetables	157.8

Your dollar when spent for the above foods is worth on the average only 46 cents, but when spent for canned fruits and vegetables is worth 63 cents. When you purchase all classes of everyday living needs, including food, clothing and rent, the BLS report indicates that your dollar is worth on the average only 57 cents.

It is evident that thousands of housewives have learned of the inexpensiveness of canned foods. According to a study made recently by the U. S. Department of Agriculture, the consumption of canned foods has increased considerably more in recent years than other foods.

Market Basket Bargain



Penny for penny, America's inflation-conscious housewives get most for their food dollar when they shop for canned fruits and vegetables. Latest available U. S. Bureau of Labor Statistics figures show the retail average for all foods is up 116.6 percent over 1935-39. As the chart shows, the group of foods registering the greatest price increase was fresh meats, poultry and fish, while canned fruits and vegetables prices increased the least, only 57.8 percent.

Information Letter, National Canners Association

PUBLICITY

Canned Foods Price Story

(Concluded from page 325)

It is suggested that canners add their own names or firm names as authority for the statements in the release in order to give the story local interest. Canners are free to substitute their names for that of the N.C.A. since the objective is publicity for canned foods and not for the Association.

Copies of "A Story Worth Repeating!" and of the matrix also were sent by the Association to a select list of some 500 newspapers, wire services, and trade papers.

"A Story Worth Repeating!" is reproduced in this issue of the LETTER on page 326.

The statistics on which the story is based are those issued by the Bureau of Labor Statistics in reporting retail food prices as of August 15, the most recent date for which the BLS index has been announced. The bar chart illustrates the relative price position of each of the ten categories of foodstuffs listed in the BLS reports.

The matrix of the bar chart is of standard newspaper size, and will enable each paper to cast lead from which the chart may be printed. The matrixes are known by the publishing trade as "mats."

Publicity Already Achieved

The Association continues to receive clippings of favorable publicity about canned food prices.

A column in the Cleveland *Plain Dealer* (circulation 253,870) by Richard T. F. Harding, entitled "The By-product," stated:

"A boast about low food prices—something not often made these days—is sent out by the National Canners Association, which points to the Federal government's index of average retail prices to prove that its products are quoted at a lower level than is any other major food group. Canned fruits and vegetables, according to the Bureau of Labor Statistics, are rated 157.7. Sugar and sweets, next lowest, stand at 170.9, and cereals and bakery products 171. From this point the curve climbs steeply to 261.8 for meats, poultry and fish.

"This means that the average price for food that could be bought for $1 just before the war had risen in July to $2.17. The Association likes to emphasize that canned fruits and vegetables have risen from $1 to only $1.58. It does not argue that man can live by those foods alone, but it puts in a word for the fact that its processors have saved much that otherwise might have been wasted."

The Indianapolis *News* (173,882) published price publicity on its business page, according to Paul Fishback of Stokely-Van Camp, Inc., who sent in a clipping.

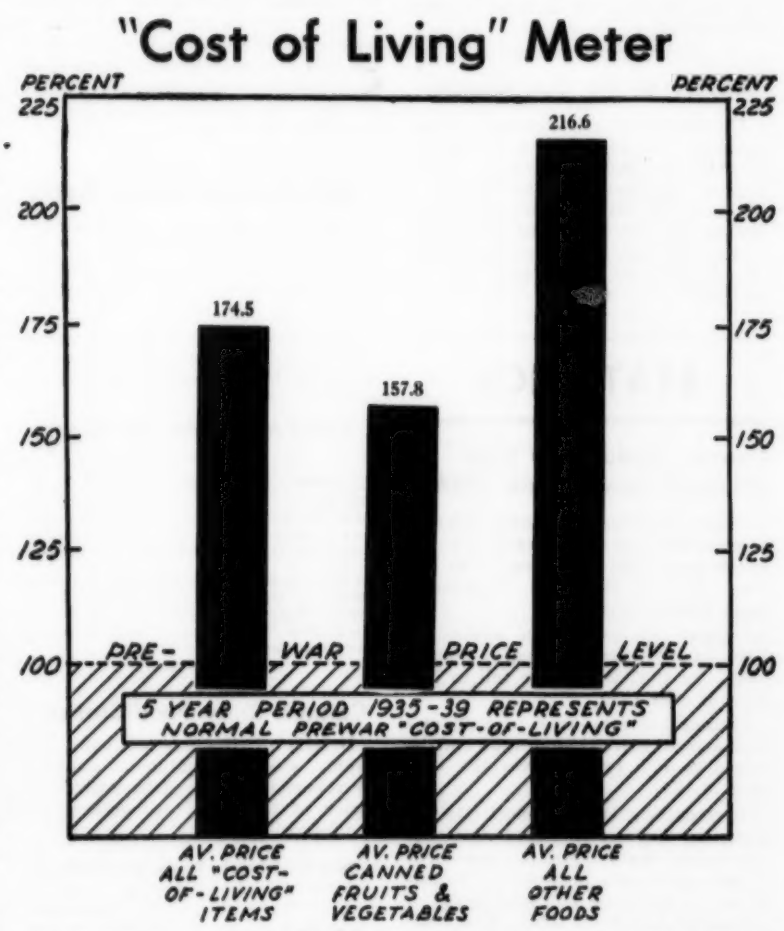
The Niagara Falls *Gazette* (29,111) was given the price story by Paul Smith of Loope & Smith, Inc., Model City, N. Y.

Reproduction of the "Cost of Living" Meter was reported to the Association this week for the first time. R. L. Smith, president of the Kuner-Empson Co., Brighton, Colo., sent in clippings from two Colorado papers which published the meter and the N.C.A. press release, and a third paper which used the press release. The papers were *Adams County Republican* of Brighton (1,785) and *Gazette-Topic* of Rocky Ford (2,365), using both materials, and *The Herald Democrat* of Leadville (3,651) using the release.

The Association also received from its clipping service a copy of the "Cost of Living" Meter and the press release published in the *Star-Journal* of Pueblo, Colo. (17,105).

The Boston *Post* (292,171) has reproduced essential facts in the N.C.A. price story.

Price publicity also was printed in the Mason City, Iowa, *Globe-Gazette* (21,114), the Sparta, Mich., *Sentinel-Leader* (1,850), and *The Wichita Beacon* (103,074).



THE "COST OF LIVING" METER above illustrates Bureau of Labor Statistics retail price indexes for August, when the average retail price of all "cost of living" items was 174.5 percent of prewar. Canned fruits and vegetables continued at low price levels, with an index of only 157.8, while the price index for all foods was 216.6. Comparable showings have been made by canned foods for many months.

'Variety with Canned Foods'

The leading food article of *Capper's Farmer* for October is entitled "Variety with Canned Foods," prepared by Miss Candice Power. The illustration, accompanying the article, shows both home and commercially canned foods. Recipes based on canned foods are a part of this feature. In the introduction Miss Power states:

"Out of cans and glass jars come the makings of delicious meals! A spicy salad, a quickie main dish or thrifty casserole, a pepped-up vegetable, a yummy dessert—any or all of these are just a few motions and minutes away from your well-stocked food shelves.

"Whether the fruits, vegetables and meats you're about to serve are home canned or 'store bought,' each has 4-star possibilities for making a meal outstanding."

History of the Can Opener

The historical development of the can opener is described in an article entitled "Is There an Inventor in the House?" appearing in the October 2 edition of *The Saturday Evening Post*. Besides paying tribute to the toughness of tin cans, the article notes that "the perfect can opener cannot be invented."

STATISTICS

Canner Productivity High Although Lower Than 1946

Productivity in the canning and preserving industry in 1947 showed an increase over 1939, according to the Bureau of Labor Statistics, in spite of some decline since 1946.

Output per production worker in 1946 was 26.5 percent greater than in 1939. In 1947 this figure fell to 18.6 percent over 1939.

Output per man-hour in 1946 was 14.2 percent more than in 1939 and declined to 10.5 percent over the 1939 base in 1947.

In reporting these productivity figures, the Bureau of Labor Statistics points out that output per man-hour is the relationship between the volume of goods produced and one factor of the production-labor time. The index does not measure the specific contribution of labor or management, or of any other factor of production.

Changes in the index show the joint effect of such separate though interrelated influences as technical improvements, the rate of operations, relative contributions to production of plants at different levels of efficiency, the flow of materials and components, the efficiency of management, skill and effort of the work force. and the state of labor relations.

Agenda for Board Meeting Being Formulated

Details of the agenda for the fall meeting of the Board of Directors, to be held November 10-12 at the Palmer House, Chicago, are being formulated. The agenda will be further discussed and finalized at the meeting of the officers and executive committee of the Board on October 8 and 9, and full details may then be ready for announcement. The Administrative Council will meet on November 11, and certain N.C.A. committees will meet on the 9th and 10th.

1948 Canned Apricot Stocks

The 1948 pack of canned apricots totalled 4,985,612 actual cases, as compared with the 1947 pack of 3,261,739 cases, according to the Association's Division of Statistics.

The stocks and shipments of canned apricots as of September 1 were reported by the Division of Statistics as follows:

Canned Apricot Stocks and Shipments

	1948-49 *Actual cases*
Carryover, June 1, 1948	714,662
1948 pack	4,985,612
Total supply	5,700,274
Sept. 1 stocks	4,601,772
Shipments, June 1 to Sept. 1	1,098,502

Figures used in the compilation of pack and stocks for California were supplied by the Canners League of California, and those for Washington-Oregon were supplied by the Northwest Canners Association.

Canned Baby Food Statistics

Details of the canned baby food supply, stock and shipment situation, as reported by the Association's Division of Statistics, are presented in the following table:

Baby Food Supply, Stocks, and Shipments

	1947	1948
	(*Thousands of dozens*)	
Canner stocks, Jan. 1	61,613	49,687
Pack, Jan. through Aug.	50,494	72,896
Supply	112,107	122,583
Canner stocks, Sept. 1	49,528	39,000
Canner shipments, Aug.	9,631	11,010
Canner shipments, Jan. 1 through Aug.	62,579	83,583

August Canned Meat Pack

The pack of canned meat processed in "official establishments" during August, 1948, as reported by the Department of Agriculture, is shown below:

Canned Meat and Meat Products Packed by Official Establishments, August, 1948 *

Items	Slicing and institutional sizes (3 lbs. and over)	Consumer packages or shelf sizes (under 3 lbs.)	Total all sizes
	—*In Thousand Pounds*—		
Luncheon meat	17,381	9,329	26,710
Canned hams	7,942	228	8,170
Corned beef	1,327	7,957	9,284
Chili con carne	358	6,059	6,417
Vienna sausage	76	6,423	6,499
Other potted and deviled meat products	.....	4,065	4,065
Deviled ham	.....	731	731
Tamales	79	2,435	2,514
Sliced dried beef	17	472	489
Liver products	.....	563	563
Meat stew	28	4,686	4,714
Spaghetti meat products	151	2,783	2,934
Tongue (except pickled)	181	516	697
Vinegar pickled products	900	1,985	2,885
All other products 20% or more meat	1,344	9,515	10,859
All other products less than 20% meat (except soup)	28	9,193	9,221
Total all products	29,812	66,938	96,750

* Some establishments failed to report canning operations for August, and the late reports will be included in the September figures. NOTE: Columns do not add to totals shown in all cases since rounded figures are used.

Study of Organic Pesticides

(Concluded from page 325)

Dr. C. H. Mahoney, Director of the Raw Products Bureau, attended the first preliminary meeting of this committee last month.

The committee is composed of representatives from a number of industries and associations concerned with food and health problems, and has been asked by the AIFA to collate available information on pesticides for study and evaluation of residue hazards.

PMA Standards for Beans

U. S. standards for grades of canned green and wax beans, as promulgated by the Production and Marketing Administration, have been brought into line with standards issued recently by the Food and Drug Administration, Federal Security Agency. The PMA standards were published in the *Federal Register* of Sept. 25.

Pacific Fisheries Policy

(Concluded from page 325)

Fishing operations will be under the strict control of the High Commissioner of the Trust Territory in order that the welfare of the native inhabitants can be safeguarded and the harvesting of the resources can be undertaken along adequate conservation lines, the Department stated.

Fishing opportunities will be equally available to the fishing enterprises of all nations except that the High Commissioner will have discretion in excluding enterprises for reasons of security or for the purpose of carrying out the obligation to promote the advancement of the inhabitants, the announcement said.

The text of the policy directive is as follows:

Commercial Fishing in the Trust Territory of the Pacific Islands

"A. With a view to cooperating in the effort to increase world food production and in order to improve the local economy and to obtain information needed for conservation of fishing resources of the area, the territorial waters surrounding the Trust Territory, except those parts closed for security reasons, should be open to the commercial fishing enterprises of all nations on a non-discriminatory basis, except that whenever a country denies rights with respect to fishing and ancillary operations needed and desired by the local inhabitants of the Trust Territory, the Government of the Trust Territory may, if necessary to obtain those rights, deny that country rights in the Trust Territory.

"B. The administering agency, in collaboration with the Fish and Wildlife Service of the Department of the Interior should conduct research as soon as possible with a view to establishing conservation regulations. Fishing grounds within the territorial waters found to be necessary for the local economy should be reserved exclusively for the use and benefit of the local inhabitants.

"C. Immediate steps should be taken to foster the development of aquatic resources, including locally owned and operated commercial fishing, bait culture, and ancillary commercial industries.

"D. With respect to canning and other fish processing industries, the administering agency should give priority to the development of locally owned and operated enterprises.

"E. The administering agency may, under such conditions as may be agreed upon by the interested departments, grant permission for the establishment and maintenance of shore facilities to outside canneries and other fish processing industries provided that, in determining whether such permission shall be granted and in establishing the conditions under which such permission is to be granted, the interests of the local inhabitants shall be paramount.

"F. Annual licenses should be required of all commercial fishing vessels operating within territorial limits or operating out of local ports. Licenses to non-local fishing vessels should be granted on the understanding that they are subject to revocation or modification wherever security interests or the interests of the inhabitants so require. Licensees should be required to furnish such statistical information regarding fishing operations as the administering agency, in collaboration with the Fish and Wildlife Service, shall deem appropriate.

"G. Local inhabitants should be employed in the complement of a fishing vessel or canning or other ancillary industry licensed for operation in a Trust Territory to the maximum extent consonant with efficient operations. Regulations should be issued prescribing minimum and non-discriminatory wages and standards of working conditions and otherwise protecting locally hired personnel. The employment of non-local personnel in shore establishments should be subject to regulations by the government of the Trust Territory.

"H. Except as provided in paragraph A above, and subject to the right of the High Commissioner of the Trust Territory of the Pacific, within established governmental policy to exclude any individual or group of individuals for reason of security, and the obligation to promote the advancement of the inhabitants, the principle of non-discrimination on the basis of nationality shall be observed in the implementation of the foregoing principles and shall apply to all aspects of commercial fishing and ancillary operations and the regulation thereof in the Trust Territory."

Harold Stassen To Speak

(Concluded from page 325)

cultural and industrial economy of that State.

He was born on a small farm near St. Paul, April 13, 1907. His father and mother were sturdy, hard-working pioneers, and Harold lived in many ways the life of the typical farm boy. He attended a country school and then finished high school in St. Paul at 14.

He remained out of school a year and ran the family farm, owing to his father's illness, and then entered the University of Minnesota at 16. To help make his way, he worked as a grease boy in a bakery and later took other jobs, winding up as a sleeping car conductor. Yet he found time to serve on University debate teams, take military training, and serve on University rifle teams which won three national contests.

When he finished school, he began the practice of law in South St. Paul. He was elected County Attorney of Dakota County in 1930, and at the end of his term was reelected by a large vote. His work as County Attorney attracted notice, and, as his acquaintance spread, his friends proposed that he file for the Republican nomination for Governor in 1938. He won the primary over two seasoned opponents and in the general election rolled up a plurality of 291,000 votes. He took office as Governor when only 31.

Stassen was reelected Governor by big pluralities in 1940 and again in 1942. After completion of the legislative session, he resigned April 27, 1943, and following a brief training period joined the staff of Admiral William F. Halsey, Jr. He was cited several times for his Navy service.

The late President Roosevelt selected Stassen as one of the American delegates to the United Nations Conference at San Francisco, and he left his duty with the fleet to help draft the United Nations Charter. He had been the first American leader to urge a "conference of nations."

Soon after the Republican National Convention last June, it was announced that Stassen would become President of the University of Pennsylvania. He was installed in that position only recently.

Recognition has come to Stassen in civil life in other ways. He was elected chairman of the National Governors' Conference and President of the Council of State Governments in November, 1940, to fill an unexpired term, and in July, 1941, was elected to a full term in these posts. The International Society of Christian Endeavor and the World Christian Endeavor Union awarded him its citation for distinguished public service in 1941, and a year later he became president of the International Council of Religious Education, a position he still holds.

Stassen was married in 1929. He and Mrs. Stassen have two children, a boy, 9, and a girl, 4.

TRADE PRACTICES

CAPEHART COMMITTEE INVITES INDUSTRY TO REPORT PROBABLE EFFECTS OF REQUIRED F.O.B. PRICING

A subcommittee of the Senate Committee on Interstate and Foreign Commerce has addressed inquiries to a wide group of trade associations, including the National Canners Association, requesting assistance in marshaling information for the Committee hearings which are to begin in mid-November on its inquiry, directed by Senate Res. 241, into the probable effect of recent court and Federal Trade Commission decisions on the legal validity of delivered price selling and freight equalizations. (See INFORMATION LETTER of September 18, 1948, p. 315.)

Secretary of Commerce Charles Sawyer in a statement issued last week also urged American businessmen to make a careful study of the economic effects of these new rules for presentation to the Capehart Committee. Pointing to the fact that "many businessmen feel strongly that sweeping changes in traditional pricing practices will be harmful to producers and consumers alike, Secretary Sawyer urged that, "Every businessman, every consumer, every community affected by this situation should not lose the opportunity to give Congress the facts. . . . We are faced with a serious, practical and immediate problem which should be examined jointly by business and government."

In view of the traditional policy of the Association not to deal with the pricing and sales policies of individual canners, the extent to which the Association is to participate in these hearings is to be considered at the November meeting of the Board of Directors. While numerous canned foods are sold on a delivered price basis or with freight equalized to some particular point of production, and particular companies in some instances sell major canned fruits or vegetables on a delivered price basis, the principal canner interest in these problems centers on important manufacturing supplies purchased by the industry.

Among the larger industries in which methods of pricing have been modified since the decision of the Supreme Court in the *Cement* case last April, outstanding is the steel industry supplying tin plate for metal containers; and included in those whose current methods of pricing are reported subject to challenge are glass containers, fibreboard, sugar, and others. Moreover, many products in the food industry in a general sense competing for the consumer's dollar are sold on some form of delivered pricing.

For these reasons, it has been considered desirable to summarize in brief form for canners the background of the present Congressional inquiry and the legal theories which have given rise to the widespread business concern about their application.

Most of the current agitation and presumably the recent changes in selling methods in several major industries result from two court decisions approving cease and desist orders issued by the Federal Trade Commission. Whether drastically different new legal rules have now been incorporated into the statutes depends necessarily on what these cases mean. Unfortunately, there are widely divergent ideas among lawyers. Some in published legal opinions have said that the legal rules of selling have been little changed. Others in widely-circulated statements have concluded that every type of delivered price selling—basing points, a national uniform delivered price, zone prices, and competitive freight equalization—has been outlawed and that only undeviating f.o.b. factory pricing is lawful. In between is a large group of lawyers who frankly suggest that all of these questions are uncertain and that Congressional action is essential.

Challenged by these Federal Trade Commission theories are all types of delivered price selling. In general, these can be grouped into five types familiar to most canners:

1. The single basing point, commonly called "Pittsburgh-plus," system of delivered pricing on the fiction that goods shipped from one factory are shipped from a more distant plant of the seller or his competitor. This method was historically used in the sale of tin plate up to 1924.

2. The multiple basing point system of selling at delivered prices computed by taking the base price at the seller's own or any competitor's factory nearest to the buyer and adding freight. This gives a different price at each place, but results in the delivered price of a standard commodity being the same for all buyers and sellers at each point. Prior to 1948 this method was employed in the sale of tin plate, and in some instances it still is used in the glass industry. A similar pattern is employed in the selling of beet sugar on a delivered price basis to meet the east coast plus freight price of cane sugar. Some fertilizers are also sold on a variant of multiple basing point selling.

3. The national uniform delivered price, sometimes called the "postage stamp" system, where the price of a product is identical delivered anywhere in the nation.

4. The zoned delivered price, in simplest form the "Higher West of the Rockies" pricing method, in which delivered prices within a series of geographical zones are the same but delivered prices vary from zone to zone.

5. Freight absorption, or competitive freight equalization, in which a seller pricing f.o.b. his factory will reduce his f.o.b. price by the difference between the cost of transporting his goods to the customer and the transportation cost from a competitor's factory located nearer to the buyer. This, of course, is not delivered pricing, but its validity appears to be controlled by the same legal rules. Pricing patterns embodying freight absorptions are widely employed in the sale of many commodities purchased by canners.

In attacking delivered price selling, the Federal Trade Commission may use either alone or in combination three different theories of illegality. These are fairly complicated but can be briefly outlined, and the effect of each on the traditional methods of pricing outlined above can be suggested.

The Commission's first approach is that wherever all or most of the sellers in a particular industry use the same method of selling, they are violating the Sherman Act where they have done so by agreement. This is not new law. Any *agreement among competitors* as to how they will sell violates the Sherman Act. And the resulting cease and desist order, as in the *Cement* case, applies only to collective activity, or "a planned common course of action." What an individual company may do, apart from continuing to agree with its competitors, is not affected.

The second Commission theory is that by using a system of delivered price selling, wholly apart from any agreement with competitors, a seller is unlawfully discriminating in price. The application of this theory can perhaps be understood by considering its

effect upon each of the general types of delivered price selling. The use by any individual manufacturer of a *single basing point system*, the old "Pittsburgh-plus," is said to be illegal because it necessarily embodies price discrimination under the Robinson-Patman Act. That statute prohibits charging one man more than another where the effect may be to injure competition and the differences in price cannot be justified by differences in the cost of manufacture, sale or delivery.

Accordingly, where a Chicago manufacturer sells his goods from his Chicago factory to a Chicago buyer on a delivered price basis by adding freight to a Pittsburgh base price, and sells to a buyer in Buffalo at a lower delivered price, he cannot justify the two different delivered prices by differences in freight. Instead, he has in his Chicago price fictitious or "phantom freight" from Pittsburgh. Wherever the amount of difference in "phantom freight" is substantial, the discrimination is clearly prohibited by the Robinson-Patman Act.

This became settled law in the *Glucose* cases in 1945. But the application of this simple theory is beclouded by two further ideas of the Commission. In considering how much of a difference in delivered price is enough to make illegality, the old rule was that the Commission must show a large enough price difference to demonstrate the "substantial probability" of such injury. The Supreme Court changed this rule in 1948 by saying that a mere "possibility" of injury is enough for a Commission order. Nevertheless, the Commission continues to say that its rules apply largely to heavy goods industries where the amount of "phantom freight" will be substantial. Where the line is to be drawn is fairly ambiguous.

More important, in looking at prices to measure the amount of possible discrimination, the Commission uses its own, novel definition of the term "price." It does not compare what the customer pays at each point, but it always deducts freight and compares the net factory realizations. These factory door realizations the Commission calls "mill net." The use of this definition was not necessary to make illegal single basing point selling embodying "phantom freight," but the definition controls the legality of uniform nation-wide delivered prices and zoned delivered pricing. Many lawyers disagree as to whether or not the Supreme Court has endorsed this Commission definition of price as being not what the customer pays but what the seller realizes after he deducts whatever freight he pays to point of delivery.

To round out the Robinson-Patman Act price discrimination charge, canners will recall that a seller may give one buyer a lower price than another if he can establish that he did so in good faith to meet competition. In charging that *multiple basing point* selling is illegal, the Commission once again does not look at the different delivered prices to different customers located at different places but insists on comparing the resulting "mill nets," or factory realizations of the seller. In multiple basing point selling the manufacturer always absorbs more freight in selling to a distant customer located nearer to a competitor's mill than he does in selling to one of his customers located near his own factory. The Commission deducts the amount of freight paid on each sale and if the difference in "mill nets" are large enough to cause competitive injury, it charges an unlawful price discrimination.

When charged, on any theory, with unlawfully discriminating in price by absorbing freight, the individual seller in an industry using multiple basing point selling, such as the cement industry, has tried to justify his action by saying that he is only meeting competition in good faith. But the Trade Commission insists, and the Supreme Court has agreed with it, that "good faith" is lacking where competition is met "regularly" or "systematically." Only in individual transactions and sporadically can a seller meet competition and justify a different lower price. This rule, derived from the 1945 *Staley* case and amplified in the *Cement* case, has universal application and goes beyond price differences measured by freight alone. Individual companies can therefore be enjoined from selling on a multiple basing point method.

As applied to *national uniform delivered pricing* and *zoned prices*, these Commission theories always will result in price discriminations where the amount of freight is important in the laid-down cost of any product. While percentages may vary from industry to industry, many have suggested that in the case of canned foods the amount of freight involved in laid-down cost to a buyer will very often be sufficient. Here again, on the Commission's theories, what the customer pays to the seller is disregarded. In any kind of uniform delivered price selling or zone price selling, freights are averaged, and in the Commission's view there is always "phantom freight" and freight absorption. The "phantom freight" is considered illegal and no justification of meeting competition permits the freight absorption.

Obviously, if "price" means what the customer pays, there never are different prices in a uniform delivered price system, since every buyer everywhere pays the same price and there are no price differences within any price zone. These particular issues now are involved in a pending Trade Commission case in the lead industry.

Of possibly more direct interest to canners is the application of the Commission theory of price discrimination to *freight equalizations*. Where an individual company sells its products f.o.b. factory, a freight equalization to meet competition may be a price discrimination. Two buyers are charged different prices at the factory. Wherever competition is met "regularly" or "systematically"—in any way other than unannounced, occasional, or sporadic fashion—the Commission view is that it cannot be considered the meeting of competition in good faith.

The legal battle rages over whether all or some of these Commission ideas were approved by the Supreme Court in the *Cement* case. There is no argument about what the Court *decided*. The difficulties flow from what it *said* in the *Cement* case. In that case the Trade Commission charged and found that a price *conspiracy* existed—that cement manufacturers had unlawfully agreed with each other as to how each would sell—and the Commission's cease and desist order applied only to future conduct by all of the cement people together carried on pursuant to agreement or conspiracy. The *Cement* order said nothing about what an individual seller of cement could or could not do. All that the Supreme Court decided was that this order was proper—that price conspirators could be told to stop conspiring. But in deciding this simple and unnovel question, the Supreme Court in its opinion talked in approving terms about the Commission's theories under the Robinson-Patman Act, particularly what constituted meeting competition in good faith, and in part adopted Commission language. The Capehart Committee is endeavoring to discover how much of this talk the Trade Commission now believes is legal gospel.

Where in any system of delivered price selling the mill nets vary widely, or where in f.o.b. factory selling substantial freight equalizations are

given, in the language of the Court, either "regularly" or "systematically," the only course left to the seller would be flat f.o.b. factory pricing with no competitive freight equalizations.

Necessarily the argument as to how often or how regularly a seller may lower his price in meeting competition without destroying "good faith" has far-ranging implications for every canner. This part of the current discussion applies to all sales made f.o.b. factory and is not limited to delivered price selling. In a highly competitive industry, such as canned foods, price changes resulting from the necessity for meeting competition may be frequent in the movement of the packs. If the regular meeting of competition in particular markets is to destroy "good faith" and render the selling canner guilty of unlawful price discriminations, this rule of law emerging in these freight absorption cases may have a wide impact in the industry.

More important is the fact that if current Commission interpretations of the Robinson-Patman Act are approved, these legal defects in pricing methods can support not only Trade Commission orders, operating prospectively, but also private treble damage suits for what has been done in the past.

Finally, the Federal Trade Commission has challenged delivered price selling in industries without reference to conspiracy and without any inquiry into price discrimination. On an entirely different and novel theory, the Commission believes it can also order every company in an industry to stop *any kind of selling* in which the individual seller's "net factory realizations" vary because most or all sellers of the same product competitively absorb freight as a regular practice. This the Commission calls "matching prices." It violates Commission concepts of a true competitive market, and is therefore an "unfair method of competition" under its own Federal Trade Commission Act, and not under the Clayton Act. This charge lies wholly apart from agreement. Theoretically, it has nothing to do with the size of the differences in net factory realizations. In practice, it has been used only in conjunction with conspiracy charges, but it is an independent ground of illegality controlling what individual companies may do wholly apart from agreement. Cease and desist orders issued on this theory leave only undeviating f.o.b. pricing, with sporadic meeting of competition, as permissible pricing conduct. One order of this type has been approved by a Circuit Court of Appeals.

These Federal Trade Commission theories of illegality are usually applied together—in separate counts in the same proceeding. Yet even absent Commission action, if these theories are now the law of the land, the possibility of treble damage actions cannot be neglected. Moreover, most businessmen desire to obey the law as a matter of public policy. In the present state of legal uncertainty, many have suggested that the only safe course might be flat f.o.b. factory pricing for all American industries.

The Capehart Committee is endeavoring to discover by a series of questionnaires, and in its hearings, the number of industries which currently sell their products under any of the five challenged methods, and the effect which the application of these theories and required f.o.b. plant pricing would have in expanding or contracting markets, in curtailing or making more abundant supplies of particular materials to various regions, in possibly dislocating factories and workers, and in changing the economic status of particular communities.

Among the questions which individual canners and other manufacturers may be asked to answer are the following typical inquiries:

1. How will the outlawing of freight absorption or freight equalizations affect the particular canning enterprise, industry, or community?

2. If freight absorption continues to be prohibited, will any canneries have to be relocated? What will be the effect on employees, farmers and other producers of raw materials?

3. Will required f.o.b. selling increase or restrict the ability of canners to compete with other canners more advantageously located marketwise? Will it work to the advantage or disadvantage of larger companies with many factories?

4. Should a seller be permitted as a regular practice to pay the whole or any part of the transportation costs in order to meet the delivered prices of competitors? Should a manufacturer be permitted to sell the same product at a uniform delivered price, or a zone delivered price even though the delivery costs vary as among his customers?

In response to numerous inquiries, Association counsel has obtained from the Capehart Committee a copy of a letter from the Department of Justice to the effect that individuals or organizations, not otherwise required to register under the Federal Lobbying Act, may furnish factual information to the Committee without becoming subject to the provisions of the Lobbying Act.

MacConaughey Quits Sales

Harry E. MacConaughey, member of the N.C.A. Administrative Council and of the Finance Committee, has arranged to relinquish duties as general sales manager of the Hawaiian Pineapple Co., Ltd., on October 1. He will continue to serve the company as vice president, a post he has held for 25 years. Mr. MacConaughey will be succeeded as sales manager by E. B. Woodworth, assistant sales manager and assistant vice president.

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